



CMA No. 880 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

Civil Miscellaneous Appeal No. 880 of 2019

1.Lakshmi
2.Kousalya
3.Mekala
4.Kalyani

... Appellants

Versus

1.S.Palanisamy
2.C.Sivakumar

3.The New India Assurance Company Ltd.,
East Cost Chambers, 1st Floor,
G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and award of the Motor Accident Claims Tribunal (II Additional Sub Judge) Erode in M.C.O.P.No.154 of 2008 dated 28.04.2009.

For Appellants	:	Mr. S. Kaithamali Kumaran
For Respondents	:	R1 Exparte
	:	R2 Left
	:	Ms. R. Sreevidhya for R3

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the appellants/claimants questioning the correctness and validity of the award



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dated 28.04.2009 passed in M.C.O.P. No. 154 of 2008 on the file of Motor Accident Claims Tribunal (II Additional Sub Judge) Erode in so far as it relates to the quantum of compensation awarded in their favour.

2. According to the claimants, on 18.05.2006 at about 10.45 a.m, the deceased (Periyannan) was driving the motorcycle bearing Registration No. TN 33 R 6745 in which his colleague was riding pillion. When the two wheeler was nearing KMCH Hospital in Perundurai Town, the tipper lorry bearing Registration No. TN 34 A 7504 was driven by the first respondent, from the opposite direction in a rash and negligent manner and dashed against the two wheeler. In the impact, the deceased sustained grievous injuries all over his body. Immediately, the deceased was taken to the nearby KMCH Hospital, Perundurai and later shifted to KMCH, Erode Hospital. In the said Hospital, the deceased was treated in intensive care unit till 16.07.2006. The condition of the deceased did not improve due to the multiple fracture injuries in the skull, hip dislocation, fracture injuries in rib and bed sour etc. Finally he was taken to home in coma stage and thereafter, he died on 01.10.2006. The deceased was aged 56 years at the time of accident and he was working as Health Inspector in Government Primary Health Centre, Pethampalayam and was earning a sum of Rs.13,544/-. The



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claim petition was therefore filed by the wife and three daughters of the deceased claiming compensation of a sum of Rs.10,00,000/-

3. The first and second respondent remained *exparte* before the Tribunal and the third respondent / Insurance Company, contested the claim petition by filing counter. The third respondent, in the counter statement, merely denied all the averments made by the claimants in the claim statement.

4. Before the Tribunal, on behalf of the claimants, P.W.1 to P.W.4 were examined and Exs.P1 to P19 were marked on the side of the claimants. The respondents in the claim petition did not adduce neither oral or documentary evidence.

5. The Tribunal, upon analysing the oral and documentary evidence, passed an award as follows:

<i>Heads</i>	<i>Award Amount</i> <i>(Rs.)</i>
Loss of income	60,000/-
Medical Expenses	75,000/-
Funeral Expenses	15,000/-
Total Loss of Income	3,00,000/-
Total	4,50,000/-



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6. The learned counsel for the appellants/claimants submitted that the award passed by the Tribunal is contrary to the oral and documentary evidence adduced by the claimants. The deceased was earning a sum of Rs.13,544/- as Health Inspector in Government service which was totally brushed aside by the Tribunal. The Tribunal also did not take note of the medical bills filed under Ex.P3 to the tune of Rs.1,90,690/- however, a sum of Rs.75,000/- alone was awarded towards medical expenses. The fact remains that the deceased had slipped into coma and was taking treatment in his home until his death for a period of five months. The Tribunal also failed to take note of the fact that the deceased had two years of left over service and due to the accident and his consequential death, his promotional chances have been curtailed. Had the deceased been alive, he would have received more monetary benefits at the time of his retirement. While so, the award of Rs.3,00,000/- towards loss of estate is not a just compensation and it is required to be scaled up. In any event, the amount of compensation awarded by the Tribunal is not a just compensation and it is required to be enhanced.

7. It is also contended by the appellants that the appellants 2 to 4 being daughters of the deceased, they are entitled to compensation under the head of love and affection but the Tribunal has failed to award any



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compensation to the appellants 2 to 4 towards love and affection. Similarly, the first appellant is the wife and she is also entitled to loss of consortium, but no such amount was awarded by the Tribunal.

8. Per contra, the learned counsel appearing for the Insurance Company would contend that what was awarded by the Tribunal is a fair and reasonable compensation and no interference is warranted by this Court. Accordingly, the learned counsel for the third respondent prayed for dismissal of the appeal.

9. Heard the learned counsel for the appellants and the learned counsel for the third respondent and perused the materials placed.

10. At the outset, it has to be pointed out that this appeal has been filed by the claimants seeking enhancement of compensation. The Insurance Company has not filed any appeal against the award of the Tribunal.

11. On perusal of Para No.12 of the award passed by the Tribunal, this Court is of the view that the Tribunal, without discussing the contents of the documentary evidence produced by the appellants or as to how



the claimants/ appellants are entitled to certain compensation or disentitled to the claim made, has simply awarded a sum of Rs.4,50,000/- on a lump sum basis. In effect, there was no discussion about the actual loss suffered by the claimants due to the death of the deceased, while determining the compensation.

12. Be that as it may, the deceased was 56 years at the time of his death and he was in Government service. He had two years of left over service. At the time of accident, the deceased was earning Rs.13,544/- and it is proved by documentary evidence Ex.P12, salary certificate.

13. The deceased was working as a Health Inspector in Primary Health Centre, Pethampalayam. He was a Government Servant. At the time of his death, he was 56 years old and two years of left over service. He was earning a sum of Rs.13,544/- as monthly salary as could be seen from Ex.P12, salary certificate. Out of this amount, 10% has to be added towards future prospects. Taking note of the age of the deceased being 56 at the time of his death, multiplier is '9'. The compensation under the head loss of dependency is calculated as follows: -

$$13,544 + 10\% (14,898) \times 12 \times 2 \times \frac{3}{4} = 2,68,164/-$$



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14. For the loss occasioned to the claimants, post-retirement of the deceased, the loss of income of the deceased can be taken as Rs.7,449/- per month, which is calculated as follows:- $7449 \times 12 \times 7 \times 3/4 = \text{Rs.}4,69,287/-$. Thus, the total compensation payable to the claimants for the death of the deceased towards loss of dependency can be arrived at (Rs.2,68,164/- + Rs.4,69,287) Rs.7,37,451/-

15. The Tribunal has not awarded any amount towards loss of estate. As per the Constitution Bench's judgment of the Hon'ble Apex Court in *National Insurance Company Limited V. Pranay Sethi and others*, reported in **2017 (2) TN MAC 609 (SC)**, a sum of Rs.15,000/- is awarded under this head.

16. A sum of Rs.15,000/- is awarded by the Tribunal towards funeral expenses is hereby confirmed.

17. For loss of love and affection, the Tribunal has not awarded any amount. At the time of death of the deceased, the second appellant was aged 24 years and she was unmarried and the appellants 3 and 4



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were married and they were in the age of 29 and 27 respectively. The Tribunal ought to have awarded reasonable compensation to the appellants / claimants towards loss of love and affection especially when the second appellant was unmarried at that time. Taking note of the above, this Court holds that the appellants 2 to 4 are entitled to Rs,40,000/- each towards love and affection.

18. The tribunal has not awarded any amount for consortium to the first appellant, being the wife. This Court, by considering the grievance of the first claimant/first appellant is inclined to award a sum of Rs.40,000/- to the first appellant towards loss of consortium

19. In view of the above, the award passed by the Tribunal is modified and the compensation is enhanced as follows:-

Loss of dependency	Rs.7,37,451/-
Funeral expenses	Rs.15,000/-
Loss of love and affection (Rs.40,000 X 3)	Rs.1,20,000/-
Loss of consortium	Rs.40,000/-
Loss of estate	Rs.15,000/-
Total	9,27,451/-

20. In the result, the Civil Miscellaneous Appeal is partly allowed to the extent indicated above awarding a sum of Rs.9,27,451/- as total



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compensation to the claimants/appellants 1 to 4. The aforesaid amount is directed to be paid by the Insurance Company with interest, as awarded by the Tribunal after deducting the amount, if any, deposited. The compensation amount, as determined in this appeal shall be deposited by the Insurance Company to the credit of MCOP No. 154 of 2008 on the file of Motor Accident Claims Tribunal (II Additional Sub Judge) Erode within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the first claimant shall withdraw a sum of Rs.3,00,000/- (wife) and the remaining sum of Rs.2,09,150/- shall equally be apportioned to the appellants 2 to 4 (daughters). No costs.

05.04.2023

Index: Yes/No
Neutral Citation: Yes/No
AT

To
1. The Motor Accident Claims Tribunal (II Additional Sub Judge),
Erode.

2. The Section Officer,
VR Section,
High Court, Madras.



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A.A. NAKKIRAN, J

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